

WFLJ

RECEIVED  
AND FILED

2016 JUN 6 PM 3 57

U.S. BANKRUPTCY COURT  
MARY A. SCHOTT, CLERK

1 JAMES PATRICK SHEA, ESQ.  
 2 Nevada Bar No. 405  
 3 ARMSTRONG TEASDALE LLP  
 4 3770 Howard Hughes Parkway, Suite 200  
 5 Las Vegas, Nevada 89169  
 Telephone: 702.678.5070  
 Facsimile: 702.878.9995  
 Email: jshea@armstrongteasdale.com

6 *Counsel for Shea & Carlyon*

7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

9 In re:

10 NATIONAL AIRLINES, INC.,

11 Debtor.

12 Case No. BK-S-00-19258-MK

13 Chapter 7

**EX PARTE MOTION FOR RELEASE  
OF UNCLAIMED FUNDS**

14 DATE: N/A

15 TIME: N/A

16 Claimant Shea & Carlyon, ("Claimant"), by and through its undersigned counsel, hereby  
 moves the Court for an Order authorizing and directing the Clerk of this Court to release unclaimed  
 funds deposited by the Trustee with the Clerk of the Court in the amount of \$757.65. This Motion is  
 made and based upon the attached points and authorities and all the relevant pleadings and papers on  
 file in this case, including the Affidavit of James Patrick Shea filed concurrently herewith.

17 Dated this 27<sup>th</sup> day of January, 2016.

18 ARMSTRONG TEASDALE LLP

19 /s/ James Patrick Shea, Esq.

20 JAMES PATRICK SHEA, ESQ.

21 Nevada Bar No. 405

22 3770 Howard Hughes Parkway, Suite 200

23 Las Vegas, Nevada 89169

24 *Counsel for Shea & Carlyon*

**POINTS AND AUTHORITIES**

25 **A. Factual Background**

26 Debtor National Airlines, Inc., ("Debtor") filed a petition under Chapter 11 of the United  
 27 States Bankruptcy Code on December 6, 2000. The case was converted to Chapter 7 on May 7,  
 28 2003 (Docket no. 1451). Tom Grimmett was appointed Chapter 7 trustee ("Trustee") (Docket no.

1 1454).

2       Thereafter, the Trustee mailed two dividend checks, one in the amount of \$10.18 and one  
 3 in the amount of \$747.47 in the above-named case issued to Shea & Carlyon ("Creditor") in care of  
 4 its counsel, James Patrick Shea. See **Exhibit 1**, list of claimant whose funds were deposited into the  
 5 Court's registry. Counsel's address had changed from when the proof of claim was filed and the  
 6 check was not received by counsel. Said check having not been cashed by said payee, the Trustee,  
 7 pursuant to 11 U.S.C. Section 347(a), delivered the unclaimed money to the Clerk, US Bankruptcy  
 8 Court. As a result, the Trustee caused the funds to be deposited with the Clerk of the  
 9 Bankruptcy Court and filed a Notice of Unclaimed Funds (Docket no. 1922).

10       As described in the Affidavit of James Patrick Shea ("Shea Affidavit") filed  
 11 concurrently herewith, Shea serves as representative of the defunct firm of Claimant. *See* Shea  
 12 Affidavit, page 1, lines 17-18. Claimant ceased operations in August 2013. James Patrick Shea and  
 13 Candace C. Carlyon were the only shareholders of that entity upon its dissolution. *See* Shea Affidavit,  
 14 page 1, lines 20-21. Accordingly, Claimant requests that the Court issue an order authorizing and  
 15 directing the Clerk of the Court to issue a check payable to Claimant James Patrick Shea and  
 16 Candace C. Carlyon in the amount of \$757.65.

17 ***B. Legal Argument***

18       The instant motion seeks an order of the Court authorizing and directing the Clerk of the Court  
 19 to release unclaimed funds deposited with the Clerk by bankruptcy trustee Tom Grimmett.  
 20 Depositing of unclaimed funds in the court's registry is governed by 28 U.S.C. §§ 2041 and 2042.  
 21 Section 2041 provides as follows:

22       All moneys paid into any court of the United States, or received by the  
 23 officers thereof, in any case pending or adjudicated in such court, shall  
 24 be forthwith deposited with the Treasurer of the United States of a  
 designated depositary, in the name and to the credit of such court.

25       This section shall not prevent the delivery of any such money to the  
 26 rightful owners upon security, according to agreement of parties, under the  
 direction of the court.

27 Section 2042 provides, in relevant part, as follows:

28       No money deposited under section 2041 of this title shall be withdrawn  
 except by order of court.

1 Bankruptcy Code section 347 and Bankruptcy Rule 3011 govern unclaimed funds in  
 2 bankruptcy cases. Section 347(a) provides as follows:

3                         (a) Ninety days after the final distribution under section 726, 1226, or  
 4 1326 of this title in a case under chapter 7, 12, or 13 of this  
 5 title, as the case may be, the trustee shall stop payment on any  
 6 check remaining unpaid, and any remaining property of shall be paid  
 7 into the court and disposed of under chapter 129 of title 28.

8 Bankruptcy Rule 3011 states:

9                         The trustee shall file a list of all known names and addresses of the entities  
 10 and the amounts which they are entitled to be paid from remaining  
 11 property of the estate that is paid into court pursuant to §347(a) of the  
 12 Code.

13 Local Rule 3011 provides:

14                         (a) Procedure for requesting payment.

15                         (1) Any entity seeking payment of unclaimed funds must file with the  
 16 clerk a written application on forms prescribed by the clerk and available from the court's website.  
 17 The applicant must disclose the following:

- 18                         (A) The service(s) rendered by any asset recovery firm  
 19 or fund locator;
- 20                         (B) Any agreement of commission, fees, compensation  
 21 or reimbursement of expenses; and
- 22                         (C) The amount(s) requested.

23                         (2) In no event may any commission, fee, compensation or  
 24 reimbursement of expense fifty percent (50%) of the claim.

25                         As discussed above, the Trustee issued a check to Shea & Carlyon after that firm had  
 26 ceased operations and directed payment to address that claimant did not occupy. As a result, the  
 27 Trustee properly deposited the funds with the Clerk of the Bankruptcy Court.

28                         As demonstrated by the Shea Affidavit, Shea & Carlyon, Ltd. ceased operations in August  
 29 2013. James Patrick Shea and Candace C. Carlyon were the only shareholders of that entity upon its  
 30 dissolution. As such, James Patrick Shea and Candace C. Carlyon are the "rightful owners" of the  
 31 funds identified on the Trustee's Notice of Unclaimed Funds in the amount of \$757.65 (Docket  
 32 no. 1923-1). Accordingly, Claimant requests that the Court enter an (proposed order uploaded  
 33 concurrent with the filing of this Motion) order authorizing and directing the Clerk of the Court to

1 pay to James Patrick Shea and Candace C. Carlyon the sum of \$757.65.

2 In accordance with Local Rule 3001(a)(1)(A)-(C), Claimant and its counsel represent the  
3 following:

4

- 5 • No asset recovery firm or fund locator was involved in this matter.
- 6 • Claimant requests that the Clerk of the Court issue one check  
7 totaling \$757.65 payable to James Patrick Shea and Candace C.  
8 Carlyon. Check should be mailed to Claimant's counsel at the  
9 address below.

10 Dated this 27<sup>th</sup> day of January, 2016.

A handwritten signature in black ink, appearing to read "James Patrick Shea". It is written in a cursive style with some variations in letter height and thickness.

11 ARMSTRONG TEASDALE LLP

12 /s/ James Patrick Shea, Esq.

13 JAMES PATRICK SHEA, ESQ.

14 Nevada Bar No. 405

15 3770 Howard Hughes Parkway, Suite 200  
16 Las Vegas, Nevada 89169

17 Counsel for Shea & Carlyon

# **EXHIBIT 1**

**EXHIBIT 1**

RECEIVED  
AND FILED

2015 SEP 28 PM 12:29

U.S. BANKRUPTCY COURT  
MARY A. SCHOTT, CLERK

1 Tom R. Grimmett, Trustee  
 2 1701 Green Valley Pkwy.  
 3 Building 9, Suite C  
 4 Henderson, Nevada 89074  
 Phone: (702) 795-2311  
 Fax: (702) 795-4479

5

6 UNITED STATES BANKRUPTCY COURT  
 7 IN AND FOR THE DISTRICT OF NEVADA

arv

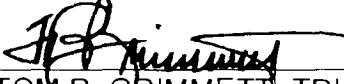
8 In re:	)	Case No. 00-19258 MKN
	)	In Proceedings Under Chapter 7
9 NATIONAL AIRLINES, INC.	)	
	)	NOTICE OF UNCLAIMED FUNDS
10 Debtor(s).	)	
11 _____	)	

12 Pursuant to Rules 3010 and 3011 of the Bankruptcy Rules, the following  
 13 unclaimed funds are being forwarded to you to be deposited in the registry of the United  
 14 States Bankruptcy Court. These funds can be withdrawn as provided in Chapter 129,  
 Title 28 2042.

<u>CLAIM #</u>	<u>CLAIMANT &amp; ADDRESS</u>	<u>CAS 106000</u>	<u>CAS 613300</u>
5002	Mercury Air Group & RPA Airline Automation Pauline Ng Lee, Esq. 2300 West Sahara Ave., Ste. 800, Box 8 Las Vegas, NV 89102		\$ 101.56
5006	Timothy S. Cory 8831 W. Sahara Ave. Las Vegas, NV 89117		\$ 58.95
5011	Great-West Life & Annuity Nancy Allf, Esq. 302 E. Carson Ave., Ste. 918 Las Vegas, NV 89101		\$ 2,382.36
5022	Shea & Carlyon James Shea, Esq. 233 South Fourth Street, Ste. 200 Las Vegas, NV 89101	\$10.18	

223830 - \$26,053.35

<u>CLAIM #</u>	<u>CLAIMANT &amp; ADDRESS</u>	<u>CAS 106000</u>	<u>CAS 613300</u>
5024	Shea & Carlyn James Shea, Esq. 233 South Fourth Street, Ste. 200 Las Vegas, NV 89101		\$ 747.47
5030	Tombo Aviation James D. Greene, Esq. 300 South Fourth Street, Ste. 1200 Las Vegas, NV 89101		\$19,467.85
5034	Computer Systems of America Janet L. Chubb, Esq. 3773 Howard Hughes Parkway, 3 <sup>rd</sup> Floor Las Vegas, NV 89109		\$ 3,284.98
<b>TOTAL</b>		<b>\$10.18</b>	<b>\$26,043.17</b>

DATE: 9/23/2015  
\_\_\_\_\_  
TOM R. GRIMMETT, TRUSTEE

NOTE: Claims that are \$25.00 or less go into CAS 10600. Claims that are more than \$25.00 go into CAS 613300. The amounts that are to be deposited into the registry can be written on check only.